

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

*In Re: Platinum And Palladium Commodities
Litigation*

This Document Relates To:

Platinum/Palladium Futures Action

MASTER FILE
No. 10 Civ. 3617 (WHP)

**FUTURES PLAINTIFFS' STATUS REPORT CONCERNING NOTICE OF THE
MF GLOBAL SETTLEMENT TO THE FUTURES CLASS**

The Futures Plaintiffs¹ (“Plaintiffs”) respectfully submit this status report concerning the execution of the program of notice to the Futures Class regarding the proposed settlement with the Trustee for the estate of Defendant MF Global, Inc., MF Global Holdings, Ltd., and MFG Assurance Company Ltd. (“MF Global Settlement”) pursuant to paragraph 15 of the Court’s November 14, 2014 Order Scheduling Hearing to Consider the Fairness, Reasonableness, and Adequacy of the Futures Plaintiffs’ Proposed Settlement with the Trustee for the Liquidation of MF Global, Inc. and Authorizing the Dissemination of Notice of Such Proposed Settlement to the Futures Class (“Scheduling Order”). Dkt. No. 245, ¶15.

The parties and Settlement Administrator have complied with the multi-pronged Court-approved program of notice set forth in the Scheduling Order.²

I. BACKGROUND

On November 14, 2014, the Court entered the Scheduling Order. Dkt. No. 245. Among other things, the Scheduling Order scheduled a “fairness hearing,” set certain deadlines relating to final approval of the proposed MF Global Settlement, appointed Lovell Stewart Halebian Jacobson LLP (“Lovell Stewart”) as class counsel for the Futures Class, approved the multi-pronged program of notice (*see* II below) and appointed A.B. Data, Ltd. to act as Settlement Administrator and execute the program of notice. *Id.*

The Scheduling Order also directed Futures Class Counsel to provide the Court with a status report as to the progress of executing the program of notice thirty-seven days before the currently scheduled February 13, 2014 fairness hearing. *Id.*, ¶15.

¹ “Futures Plaintiffs” refers to Plaintiffs Richard White, Harry Ploss and The Stuart Sugarman Trust.

² On October 1, 2014, the Futures Plaintiffs submitted a status report detailing the execution of the program of notice associated with the Futures Plaintiffs’ separate proposed settlement with the Moore Capital Defendants and Defendant Welsh (“Moore Capital Settlement”). Dkt. No. 220.

II. THE COURT-APPROVED PROGRAM OF NOTICE

The Scheduling Order approved the following program of notice:

- (1) mail notice to all “large traders” in NYMEX platinum and palladium futures contracts during the Class Period whose names were obtained pursuant to subpoena to the NYMEX [Dkt. No. 245, ¶7];
- (2) mail notice to all clearing brokers on the NYMEX during the Class Period whose names were obtained pursuant to subpoena to the NYMEX (with the direction that such firms should forward the notice to their relevant customers or provide the names and addresses of any such relevant customers to the Settlement Administrator) [*id.*];
- (3) publication notice (a) for two consecutive months in Futures Magazine; (b) on the Futures Magazine website for one month; (c) for two consecutive months in Stock and Commodities Magazine; (d) on the Stock and Commodities Magazine website for one month; and (e) in two editions of The Wall Street Journal [*id.*, ¶8]; and
- (4) the establishment of a settlement website which is searchable on the internet and which allows members of the Futures Class to obtain information about the proposed Settlement.

Id., ¶9.

III. THE SETTLEMENT ADMINISTRATOR HAS COMPLIED WITH THE MAIL AND PUBLICATION NOTICE PROVISIONS OF THE COURT-APPROVED PROGRAM OF NOTICE IN ACCORDANCE WITH THE SCHEDULING ORDER

The Settlement Administrator has confirmed to Futures Class Counsel the following.

Mail notice to the large traders and NYMEX clearing members was completed by November 21, 2014 in accordance with the Scheduling Order. *Compare*, Dkt. No. 245, ¶7. Publication notice commenced as soon as practicable after mail notice of the Settlement began and continues in

accordance with the Scheduling Order.³ *Id.*, ¶8. The Settlement website was established before July 25, 2014 and remains available and searchable on the Internet in accordance with the Scheduling Order. *Id.*, ¶9.⁴

Pursuant to the Court's instructions at the November 12, 2014 preliminary approval hearing, the mailed notice prominently advised Futures Class members (in red lettering and twice on the first page of the notice) that the notice they are receiving is **separate and in addition** to the notice they previously received concerning the Moore Capital Settlement such that the notice requires their separate review. *See* Class Notice attached as Exhibit A hereto, p. 1. Additionally, similar language (also in red lettering) was placed on the **outside** of the mailing envelope in order to further alert members of the Futures Class of the new information contained in the notice.

The mail notice also clearly informed members of the Futures Class that while they need only file a single proof of claim in order to participate in both the MF Global Settlement and the Moore Capital Settlement, they must submit separate objections and/or separate requests for exclusions in respect of each of the two proposed settlements. Exhibit A, pp. 1, 6-7.

The homepage for the Settlement website clearly advises members of the Futures Class that there are two separate settlements. Each settlement has a separate link and webpage. Similar to the Class Notice, the homepage also clearly advises members of the Futures Class that while they need only file a single proof of claim in order to participate in both settlements, they must submit separate objections and/or separate requests for exclusions in respect of each of the two

³ The Settlement Administrator has confirmed that notice of the MF Global Settlement has been and will be published pursuant to the following schedule: (a) in the January and February 2015 print editions of Futures Magazine; (b) on the Futures Magazine website from December 1 through December 31, 2014; (c) in the January and February 2015 print editions of Stock and Commodities Magazine; (d) on the Stock and Commodities Magazine website from December 1 through December 31, 2014; and (e) in the December 5 and December 8, 2014 editions of The Wall Street Journal. *Compare* Dkt. No. 245, ¶8.

⁴ The Settlement website is available at <http://platinumpalladiumfutureslitigation.com/>.

settlements.

IV. FUTURES CLASS COUNSEL'S AND THE SETTLEMENT ADMINISTRATOR'S EFFORTS TO OBTAIN ADDITIONAL CLASS MEMBER INFORMATION FROM NYMEX CLEARING FIRMS

Consistent with the second prong of the program of notice (*see* "II" above"), the first page of the Class Notice stated that NYMEX clearing firms should provide the name and last known address for any customer who traded NYMEX platinum or palladium futures contracts during the Class Period to the Settlement Administrator within two weeks of receiving the notice. *Compare* Dkt. No. 245, ¶7 *with* Exhibit A, p.1. The Class Notice further stated that the Settlement Administrator would then cause copies of the notice to be forwarded to each customer so identified. *Id.*

As previously reported to the Court, Lovell Stewart believes that Defendant MF Global was by far the largest NYMEX clearing firm during all or part of the Class Period. Dkt. No. 245, p. 3. MF Global has since provided the names and last known addresses of approximately 3,662 potential members of the Futures Class to the Settlement Administrator, who has mailed the Class Notice to such persons.

The Settlement Administrator has sought to contact NYMEX clearing firms⁵ (including by telephone and letter) in an effort to see whether additional members of the Futures Class could be identified for purposes of providing mail notice. Dkt. No. 220, p. 5. All of the names and addresses previously obtained in this (or any other) regard by the Settlement Administrator in connection with the Moore Capital Settlement, were used in order to provide mail notice of the MF Global Settlement.

⁵ The NYMEX provided the names of approximately fifty-five clearing firms that operated during the Class Period. However, due to bankruptcies, industry consolidation and the relatedness of certain clearing firm entities identified by the NYMEX, the Futures Plaintiffs estimate that, for practical purposes, there are approximately thirty to thirty-five relevant entities.

To date, the Settlement Administrator has reported to Futures Class Counsel that ten NYMEX clearing firms and/or brokerage firms (not including MF Global) have provided names and addresses of potential members of the Futures Class to the Settlement Administrator. These ten firms have provided a total of approximately 1,384 names and addresses of potential members of the Futures Class. The Settlement Administrator has mailed the Class Notice to these persons (as well as to the large traders, NYMEX clearing firms and other persons listed above). Pursuant to Lovell Stewart's instructions, the Settlement Administrator continues to follow up with the approximately twenty-five NYMEX clearing firms who have not responded to the Settlement Administrator's repeated inquiries.

CONCLUSION

The parties and Settlement Administrator have complied with the multi-pronged Court-approved program of notice set forth in the Scheduling Order. They continue to make efforts to achieve a more fulsome notice. Further reports on the status of opt outs, the number of proofs of claim submitted and further matters relating to notice will be submitted in Class Counsel's filing due on February 6, 2015.

Dated: New York, New York
January 7, 2015

Respectfully submitted,

/s/ Christopher Lovell
Christopher Lovell
Christopher M. McGrath
LOVELL STEWART HALEBIAN JACOBSON LLP
61 Broadway, Suite 501
New York, New York 10006
Telephone: (212) 608-1900
Facsimile: (212) 719-4775

Counsel for Futures Plaintiffs and the Futures Class